true legal owner of the vehicle has a right to be heard. Section 92(4) of the Road Traffic Ordinance clearly provides that an order for the forfeiture or for the release of the motor vehicle seized shall be made by the court before which the prosecution has been held and that an order for the forfeiture of such vehicle may be made if it is proved to the satisfaction of the court that an offence has been committed and that the vehicle was the subject matter of the offence, notwithstanding that no person may have been convicted of such an offence. The operative words in section 92(4) with regard to forfeiture are "an order for the forfeiture of such vehicle *may* be made if it is proved to the satisfaction of the court that an offence against that section has been committed." The forfeiture provision there is clearly distinguishable from the forfeiture provision of the Fisheries Act, 1963 or as was referred to in the *Chung Khiaw Bank* case the forfeiture provisions of the Customs Ordinance (now repealed) and the Excise Act, 1961.

I dealt with the construction of section 15(1) of the Fisheries Act, 1963 in *Ong See Ke* v. *Public Prosecutor*[2] where at page 147 of the judgment the following appears:

"It is the contention of the counsel for the appellant that since a licence was in force in respect of the trawl net then the use of the net cannot be said to be 'prohibited'. This argument has no merit. It is to be noted that the licence issued was subject to a number of conditions and one of these conditions is that the area for the operation of the trawl net authorised is the area beyond 7 miles from the coast of the State of Perak. In other words the licence is valid only for trawl fishing outside the 7 miles off the coast but not within the 7 miles and using a trawl net within the 7 miles is therefore unauthorised or prohibited. Furthermore it is also clearly worded in section 13(1) of the Fisheries Act, 1963, which provides for the penalty for breach of provisions of the Act and regulations and rules thereunder where it states that any person who does any act contrary to, or fails to comply with, the provisions of this Act or any regulations or rules made thereunder shall be guilty of an offence. Regulation 4(6) of the Fisheries (Maritime) Regulations, 1967 as amended in 1970 (vide P.U.(A) 56/70) provides clearly that a contravention of any of the conditions of the licence shall be deemed to be an act contrary to the regulations and by virtue of section 13(1) of the Act an offence under the Act. In this case the statutory conditions attached are as in the Fifth Schedule (see regulation 4(4))."

Counsel for the appellants relied on the Federal Court case *Public Prosecutor* v. *Lee Chin Chai*[3] which was a reference on the same section by the Public Prosecutor as a result of case *Public Prosecutor* v. *Lee Chin Chai & Ors.*[4] In fact the question raised in that reference before the Federal Court was a narrow one, that is whether a vessel in which fishing appliances are found contrary to regulation 3(b) of the Fisheries (Maritime) Regulations, 1967, is a thing in respect of which an offence has been committed contrary to the provisions of the Act or any regulations or rules made thereunder, and thereby liable to seizure under section 14(1) of the Fisheries Act, 1963 (as amended by Act A152 of 1972) and consequently liable to forfeiture under section 15(1) of the same Act. The answer to that was given in the negative by the Federal Court. Both these cases cannot be applied to the present appeal because in the instant case the offence was for operating trawl nets outside the prescribed area in the licence whereas in *Public Prosecutor* v. *Lee Chin Choi, supra,* the offence was for possession of fishing appliances without a licence.

The case of *Juk De Sa* v. *Public Prosecutor*[5] is not also applicable here because there the question of section 407 of the Criminal Procedure Code was not raised. Section 407 of the Criminal Procedure Code is a general provision relating to the order for disposal of property regarding which an offence has been committed and provides that during or at the conclusion of any inquiry or trial in any criminal court the court may make such order as it thinks fit for the custody or disposal of any property or document whatsoever produced before it regarding which any offence appears to have been committed or which has been used for the commission of any offence. But the words of section 15(1) of the Fisheries Act, 1963 are so clear that an order for forfeiture *shall* be made if it is proved to the satisfaction of the court that the offence committed is either for using any net, instrument, fishing material or appliance which is "prohibited" or the offence is for doing or carrying on an act without a licence or permit required by that Act or any regulations or rules made thereunder provided that the "thing" was the subject matter of or was used in the commission of the offence. There was no doubt also that the general provisions of section 407 of the Criminal Procedure Code are overridden by the specific provision of section 15(1) of the Fisheries Act, 1963 with regard to disposal of property and that to have an inquiry under section 407 of the Criminal Procedure Code would in any case be meaningless for the court must give effect to the express words of section 15(1) of the Fisheries Act, 1963.

For the above reasons the appeal is dismissed.

Appeals dismissed.

Solicitors: *Yeap & Co.*

LENG JOO KONG v. CHIA YOON YEN

[A.C.J. (Abdul Razak J.) November 27, 1978]

[Kuantan — Originating Notice of Motion No. 3 of 1978]

Employment — Work on rest days — Whether employee entitled to claim wages — Weekly Holidays Ordinance, 1950, s. 6(i) — Employment Ordinance, 1955, ss. 58, 59(1), 60(3).

This was an appeal against the decision of the Commissioner for Labour disallowing the appellant wages on work done on rest days and entering judgment for the employer. The appellant in this case was a foreman in a motor workshop. He was required by the respondent/employer to work seven days a week. The appellant started work in October 1975 and was paid a sum of $240 per month. On February 1, 1976 he was given an extra $110 per month until he was dismissed. He therefore claimed rest day pay for 88 days at $13.46 per day amounting to $1,184.48 from July 1, 1975 to March 11, 1977.

Held, allowing the appeal: the appellant earned between $240 a month to $350 which brought him within the ambit of section 60 of the Employment Ordinance entitling him to claim wages on rest days.

ORIGINATING NOTICE OF MOTION.

S. Sivasubramanian for the appellant.

Respondent in person.

Abdul Razak J.: This is an appeal against the decision of the Commissioner for Labour wherein he disallowed the appellant wages on work done on rest

day and entered judgment for the employer. The appellant contends that the Commissioner was wrong in so deciding and held that he was entitled to claim wages on rest day under the Employment Ordinance. The issue raises a question of importance in labour relations on the effect of the Weekly Holidays Ordinance and the Employment Ordinance in so far as the employee's right to holiday and rest day are concerned.

The facts of the case were set out by the Commissioner in his grounds of decision. The appellant alleged that he was a foreman in a motor workshop. He was required by the respondent/employer to work seven days a week. He therefore claimed rest day pay for 88 days at $13.46 per day amounting to $1,184.48 for period from July 1, 1975 to March 11, 1977. The sum of $13.46 was based on his salary at $350 per month. He was dismissed from work on March 1, 1977. The appellant started work on October 1, 1975 and was then paid a sum of $240 per month. On February 1, 1967 he was given an extra $110 per month until he was dismissed. It was a question whether the sum of $110 was due to him. These points were for present purposes of no immediate concern because as the Commissioner rightly indicated it was first essential to determine whether the appellant was entitled to rest day pay. The question of how much he was entitled was only consequential to the determination.

The Commissioner in saying that the appellant was not entitled to rest day pay stated that the Weekly Holidays Ordinance did not allow him such pay quoting section 6 sub-section (1) of the Ordinance. The section reads —

"6(1). Every person employed in any shop, other than an unassisted shop, in a class of shops mentioned in the Schedule to this Ordinance, or in any restaurant or theatre shall be given in each week a holiday of one whole day."

He says neither the Weekly Holidays Ordinance or Rules enable the workers of the appellant's category to work seven days per week. He further quotes section 11 and says anyone who contravenes section 6 sub-section (1) is punishable under the section as it was illegal to work on rest day. He then refers to section 59 sub-section (1) of the Employment Ordinance and says that although the section allows the labourer to work on rest day and claim wages under section 60 sub-section (3) the Employment Ordinance is a general provision and cannot override the special provision of the Weekly Holidays Ordinance. The two sections read —

"59(1). Every labourer shall be allowed in each week a rest day of one whole day as may be determined from time to time by the employer.

60(3). Any labourer who at the request of his employer works on a rest day shall be paid an extra day's wage at the ordinary rate of pay for one day's work in addition to the ordinary rate of pay for that day."

With respect I must disagree with the Commissioner's contention. I need mention that it would appear there has been a failure by all parties concerned to direct their mind to the essential provisions of section 58 which would, it seems, to me, to clear the doubt on what is the correct interpretation of the law on this point. Section 58 reads —

"58. The provisions of this Part shall only apply to labourers who are in receipt of wages not exceeding five hundred dollars a month or such other amount as may be fixed from time to time by the Minister."

It is thus clear that Part III of the Employment Ordinance of which sections 59(1) and 60 are a part allows payment of wages on rest days provided two conditions are satisfied, firstly, that the claimant is a labourer within the meaning of the Employment Ordinance and secondly, that he is a labourer whose wages per month do not exceed $500 per month. It is thus safe to proceed from there to say that by implication it is intended by the legislature to say that in spite of the provision against working on rest days in the Weekly Holidays Ordinance, certain types of people are by the Employment Ordinance excepted from it. The Weekly Holidays Ordinance which prohibits working on rest day clearly seems to apply to all types of workers whether they are defined as labourers or not whereas section 59 and section 60 by virtue of which the appellant is claiming his wages on rest day apply only to one category of workers, namely, labourers whose wage does not exceed $500 per month. The apparent conflict between the two statutory provisions is thus of one saying that all workers must stop work whether they like it or not on a certain day in a week, and the other saying that one category of workers may nevertheless work on that day and get paid. The Employment Ordinance being a later Act, we can safely assume the provisions of the Weekly Holidays Ordinance regarding rest day must have been within the purview of the legislature when the later Act was enacted. I suppose the purpose of the law providing for rest days for workers is to ensure that physically and mentally they do not suffer by continuous and uninterrupted days of work. The legislature in other words has thought fit to consider nevertheless that labourers earning $500 or less are physically and mentally able to work on rest days with no detriment to them thereby. There can be, it seems to me, no other way of construing the two provisions which otherwise would be repugnant.

The appellant earned between $240 a month to $350 which brings him therefore within the ambit of section 60 entitling him to claim wages on rest day. I would therefore allow the appeal and order that the matter be returned back to the Commissioner to compute the wages duly earned by the appellant during the period of the rest days.

Appeal allowed.

Solicitors: *S. Sivasubramanian.*